

LEAVES OF ABSENCE OVERVIEW

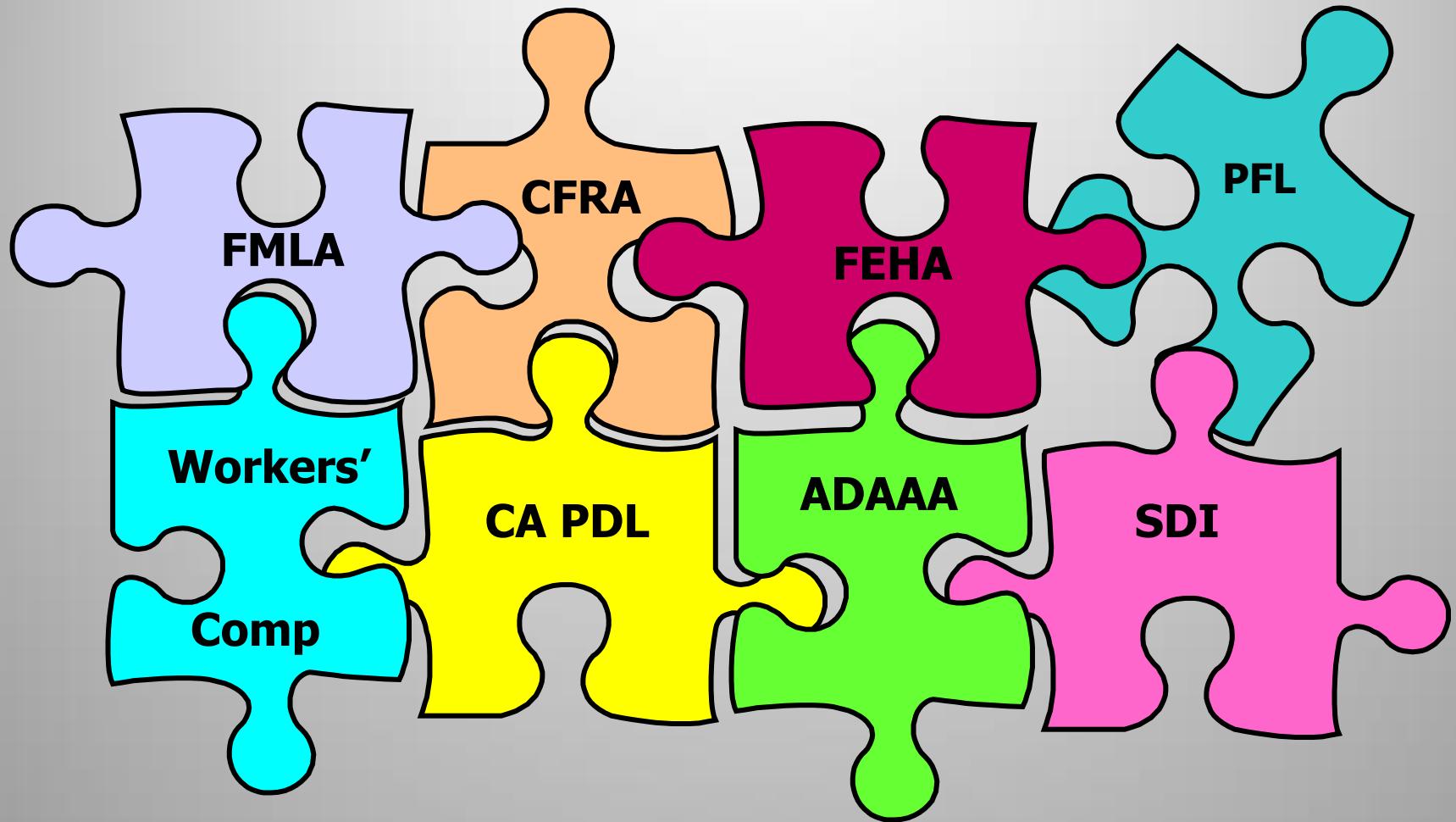
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Pieces of the Leave Puzzle



Pieces of the Leave Puzzle

- Family and Medical Leave Act (FMLA)
- California Family Rights Act (CFRA)
- California Fair Employment & Housing Act (FEHA)
- Americans with Disabilities Act (ADAAA)
- Pregnancy Disability Leave (PDL)
- Workers' Compensation (WC)
- State Disability Leave (SDI)
- State "Paid Family Leave"(PFL)

Laws Focusing on Employee or Family Illnesses



Family Medical Leave Act and California Family Rights Act (FMLA/CFRA)

- Provides unpaid, job-protected leave for serious health conditions
- FMLA also provides military exigency leave and leave for military caregivers
- Not concerned with whether leave poses an undue hardship for the employer
- Permit termination if employee is unable to return to duty at conclusion of leave

Overview of FMLA/CFRA

- FMLA and CFRA provide:
 - Up to 12 weeks of unpaid leave for employee's, and certain relative's serious health condition
 - Up to 26 weeks of leave to care for qualifying military-related reasons (FMLA only)
 - Continued employer contribution towards medical coverage



FMLA/CFRA Employee Eligibility

- Employee has worked for LLNS for at least 12 months
 - 12 months need not be consecutive
 - Count any week in which the employee is on the payroll
- Employee has worked at least 1,250 hours in preceding 12 months
 - 12 consecutive months preceding the start of the leave (not the date of the leave request)
- Employee works at a site where there are at least 50 employees within a 75-mile radius

FMLA/CFRA Qualifying Leave Reasons

- Employee's own "serious health condition"
- Care for an immediate family member with a "serious health condition"
- Birth, adoption or foster care placement of a child, and to bond with the child
- Care for a "covered service member" with a serious injury or illness related to certain types of military service (FMLA only)
- Exigent Circumstances Military Leave (FMLA only)
e.g., pre-deployment arrangements, counseling, rest and recuperation, post-deployment activities

Serious Health Condition Defined



- A physical or mental illness, injury or impairment for which an employee requires inpatient medical care or continuing treatment by a health care provider.
- Must be the result of an illness, injury or impairment that lasts more than three consecutive days or that requires ongoing treatment.
- Serious health conditions may include migraines, clinical depression, nervous disorders and childbirth.

FMLA/CFRA

Employee Requests for Leave

Employees must provide:

- At least 30 days' advance notice for foreseeable leaves
- Notice “as soon as practicable” for unforeseen leaves
- Need not mention FMLA/CFRA specifically
 - Calling in sick is not enough by itself to count as an FMLA/CFRA leave request

FMLA/CFRA Leave Measurement Year

- Calendar Year used for most*
 - Up to 12 workweeks of leave each calendar year

*Military leave exception



Laws Focusing on Disability

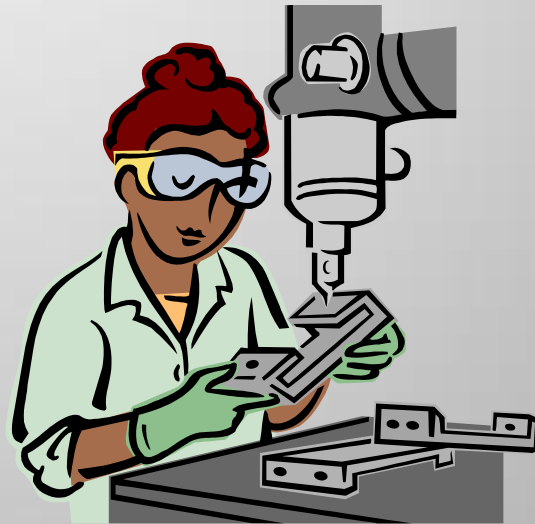
Federal: Americans with Disabilities Act (ADAAA)

State: Fair Employment Housing Act (FEHA)

- Purpose is to integrate disabled persons into the workforce and eliminate discrimination
- Focuses on what employee *can* do
- Balances reasonable accommodation for employee with undue hardship to employer
- Requires individualized inquiry

Overview of ADAAA/FEHA

- ADA Amendments Act (ADAAA) more closely aligned federal ADAAA with CA FEHA
 - Physical or mental impairment that limits a major life activity
 - Focus no longer on whether employee is disabled, but whether disability can be reasonably accommodated



Examples of Workplace Accommodations under ADAAA/FEHA



- leave of absence
- access to facilities
- job restructuring
- reassignment
- rescheduling
- re-equipping
- shadow employees
- light duty

Interactive Process at LLNS



Interactive Process at LLNS

- When an employee requests an accommodation or is given medical restrictions by an outside physician– the employee will be asked to go through Health Services to have work restrictions issued.
- After the work restrictions are issued, the organization looks at the job demands worksheet and reviews it with the employee to identify which parts of the job will need to be modified for the employee to safely work within his/her work restrictions.

Interactive Process at LLNS

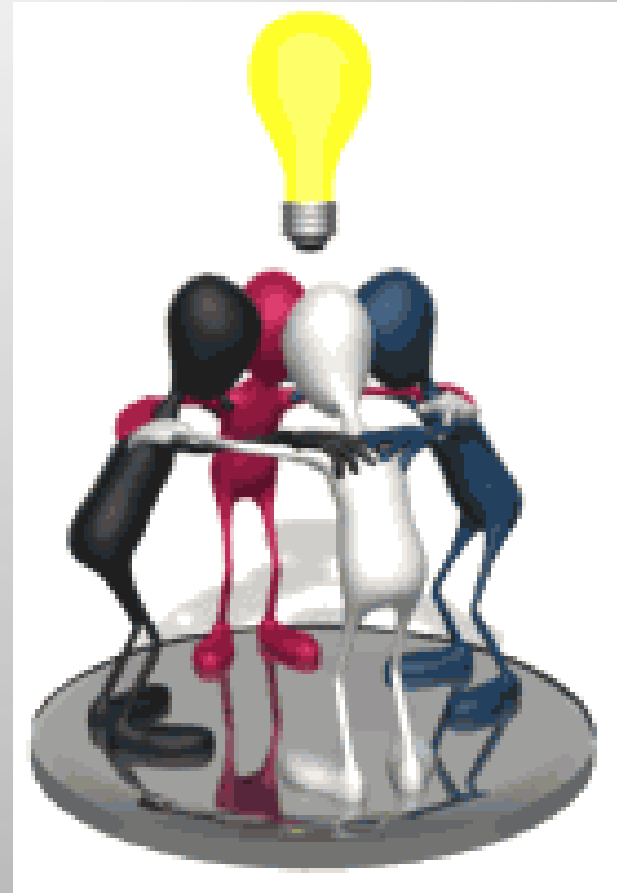
- If after reviewing the job demands, it is clear that the employee will be unable to do the essential functions of the job even with reasonable accommodation, then the employee is placed off work unless or until another assignment can be identified or his/her work restrictions change.
- If there are any questions about the intended meaning of a work restriction, HSD contacts the treating medical provider to ask for clarification of the restrictions.

Interactive Process at LLNS

- LLNS will continue an ongoing dialogue with the injured or ill worker and solicit any ideas that the employee might have about ways to modify the work so that it can be safely performed or any other job opportunities that the employee might be able to do while on restricted duty.
- If the job can be modified to accommodate the employee, then a temporary (or permanent) accommodation memo is constructed and given to the employee.

LLNS Disability Management Team

- Assists and supports managers to coordinate return to work efforts.
- Develop creative solutions to help get employees back to work.



Differences Between FMLA/CFRA and Other Leaves

FMLA/CFRA vs. ADAAA/FEHA

- Not all “disabilities” under ADAAA/FEHA are “serious health conditions” under FMLA/CFRA
- Not all “serious health conditions” under FMLA/CFRA are “disabilities” under ADAAA/FEHA



FMLA/CFRA vs. ADAAA/FEHA

ADAAA/FEHA leaves:

- Available for employees' medical conditions only – not to care for family members
- Open-ended as a “reasonable accommodation”
- No length of service requirements for eligibility



FMLA/CFRA vs. ADAAA/FEHA

Accommodations:

- ADAAA/FEHA requires reasonable accommodation to perform essential job functions
- ADAAA/FEHA accommodations need not be the employee's preferred accommodation, merely a reasonable accommodation
- FMLA does not consider/require accommodations

Law Focusing on Injuries/illnesses in the Workplace



Workers' Compensation (WC)

- Provides no-fault compensation for employees injured or disabled on the job
- Medical treatment/wage replacement
- Focuses on functional limitation in the workplace



Overview of Workers' Compensation

- No specific period of leave provided
- Runs concurrently with FMLA/CFRA
- May qualify as a disability
- Available on first day of employment – no service requirements
- Administered by LLNS workers compensation carrier, with Health Services as a liaison
- Risk Management oversees LLNS' program

Coordination of Payments

- Finance/payroll coordinates payments to employee taking into account:
 - Waiting periods
 - Extended sick/injury leave
 - Third party payments
 - Employee leave banks*



* Based on leave election made by employee

FMLA/CFRA & Workers' Compensation

- Employees on workers' comp leave and concurrent FMLA/CFRA leave lose FMLA/CFRA protection after 12 weeks*
- ADAAA/FEHA still apply, and may require additional unpaid leave as accommodation

*other protections/requirements may apply

Laws Focusing on Pregnancy



Pregnancy Disability Leave (PDL)

- Reflects the California view that normal pregnancies are not serious health conditions, unless complications result
- Provides additional leave for employees disabled by pregnancy, childbirth or related medical conditions (e.g., infertility)
- Requires employer to continue contributions for health benefits

Overview of Pregnancy Disability Leave

- Disability leave permitted for period that employee is “actually disabled by pregnancy, childbirth or related medical conditions”
 - Includes severe morning sickness
 - Includes time off for prenatal care
- Leave entitlement is for each pregnancy
- Must temporarily transfer employee to another job/position if medically advisable or reasonable

Must reinstate to same or, under very limited circumstances, a comparable position

Pregnancy Disability Leave Requirements

- Available on first day of employment – no service requirements
- Employees are entitled to up to 4 months of unpaid leave for period of disability
- Pro-rata leave for part-time employees
- Same employee requirements for notice of need for leave as FMLA/CFRA
- Requires employer to continue contributions for health benefits

Pregnant Employees in California

Protected time off from work includes:

FMLA – the first 12 weeks (if qualified)

1st, PDL – Up to 4 months of leave *unless* employee is no longer “disabled” due to pregnancy/childbirth

Then, CFRA – Up to 12 weeks of unpaid leave for “baby bonding” after birth

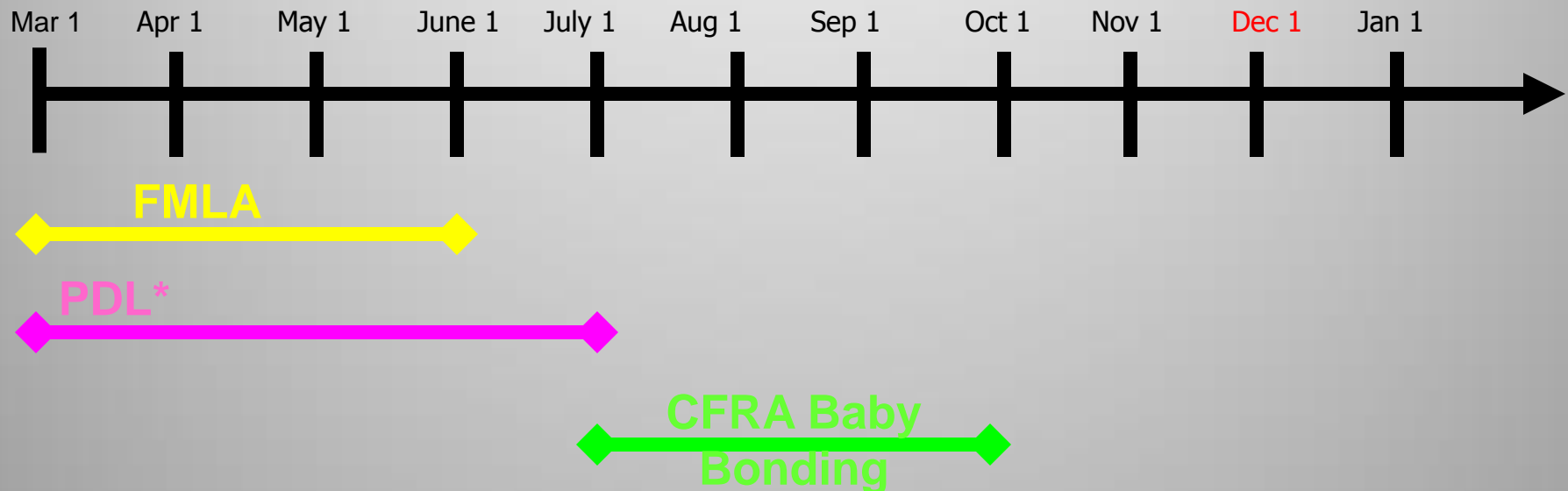
CFRA leave commences at the conclusion of PDL leave

Baby Bonding Leave



New-child bonding leave under CFRA must be completed within the first year of the birth or placement of the child. Parents (married or unmarried) and registered domestic partners who work for the same employer are limited to a combined total of 12 weeks of CFRA for new-child bonding.

Putting It All Together: Pregnant Employees in California



**Concurrent or
Consecutive Leave?**

Concurrent or Consecutive?

FMLA/CFRA/ADAAA/FEHA

- Employees who exhaust family and medical leave may be entitled to additional leave as reasonable accommodation for a disability
- Additional leave can be denied if an undue hardship to the employer

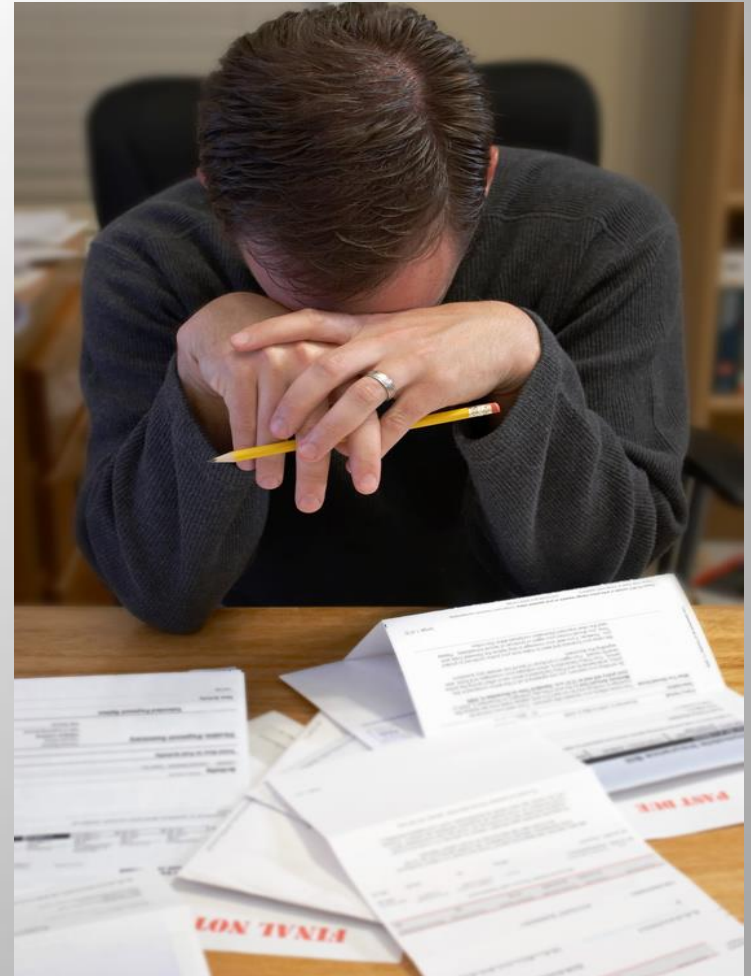
Concurrent or Consecutive?

FMLA/CFRA

- Usually concurrent, except:
 - Pregnancy/childbirth/baby-bonding
 - When domestic partners are involved
- PDL
 - May be concurrent with FMLA
 - Always consecutive with CFRA

Wage Replacement

- Provided by LLNS
 - Hartford Disability
 - Paid Sick Leave
 - Paid Vacation Leave
 - Organ Donor Leave
 - Extended Sick Leave



Wage Replacement

➤ Provided by the State:

CA State Disability Insurance (SDI)

State “Paid Family Leave” (PFL)

- Wage replacement insurance
- Funded by payroll tax contributions
- Administered by the Employment Development Department (EDD)
- Not a source of additional protected leave

Supplemental Disability

- **Short Term (First 12 months)**

- Coordinates with State Disability
- Pays up to 70% of monthly salary (maximum \$15,000/per month)
- Must select a waiting period of 7, 30, 90, or 180 days
- Pregnancy benefit paid up to 2 weeks pre delivery date and 6 weeks post delivery

- **Long Term (beyond 12 months)**

- Pays up to 50% of monthly salary (maximum \$15,000/per month)
- May be offset by money from other sources up to 70% of monthly salary (e.g., Social Security and LLNS Disability Income)

Offered by LLNS through



Paid Family Leave (PFL)



State program provides temporary benefit payments to workers for “baby bonding” after birth

- Benefits paid up to 6 weeks
- Pays 55% to weekly maximum (based on earnings)
 - 2014 maximum is \$1,075
- Can be taken up to one year from date of birth
- May be taken intermittently or while working part-time

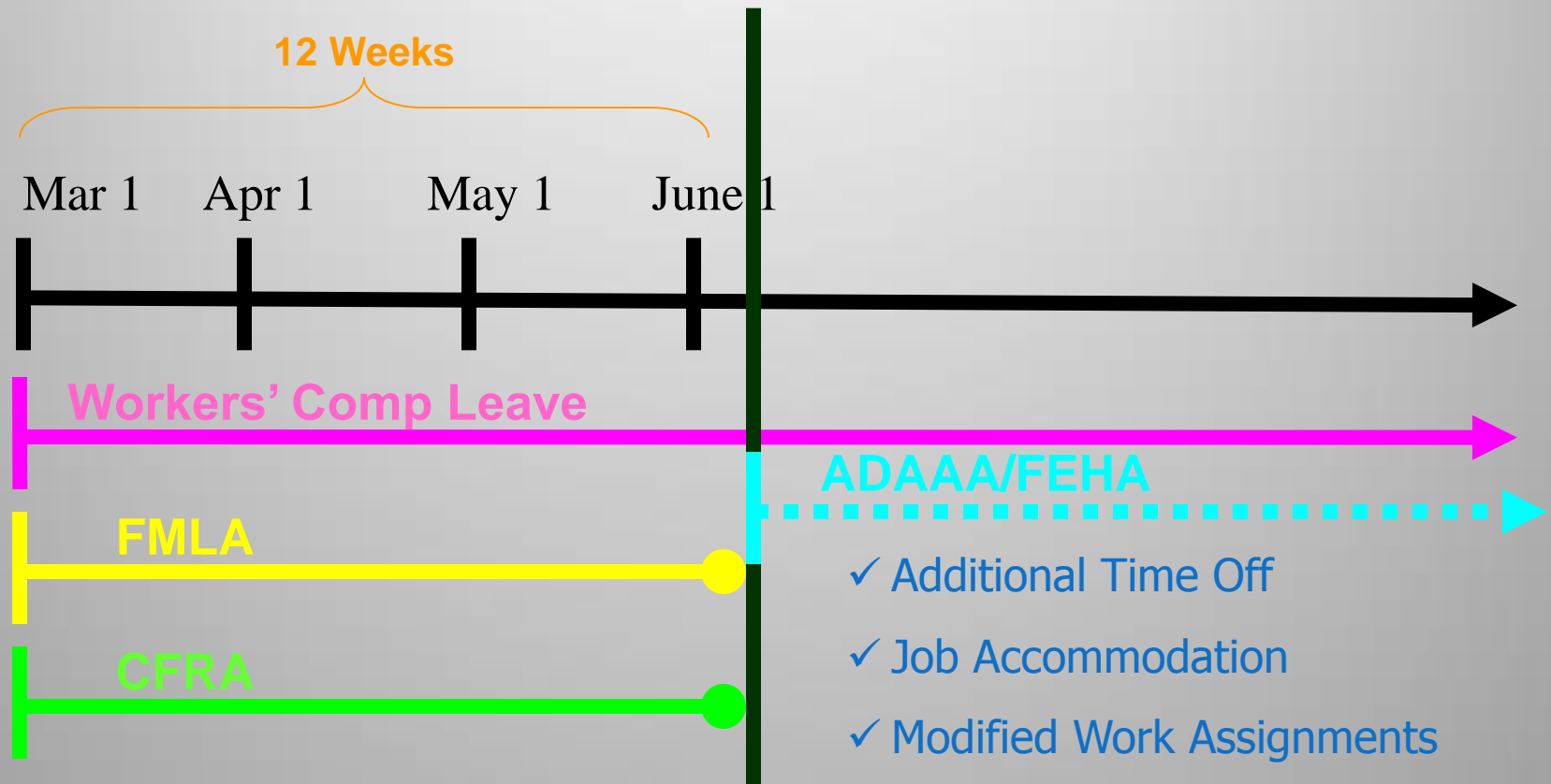
California State Disability



The State Disability Insurance (SDI) program provides temporary benefit payments to workers for non work-related disabilities.

- SDI is a mandatory tax from employees' wages
- 7 day waiting period before benefits are paid
- Benefits paid up to 12 months
- Pays 55% to weekly maximum (based on earnings)
 - 2013 maximum is \$1,067
 - Pregnancy benefit paid up to 4 weeks pre delivery date and 6 weeks post delivery

Putting It All Together: FMLA/CFRA/Workers' Comp



Relevant LLNS Guidance

- **PPM Section G – Benefits (<https://pppm-int.llnl.gov/>)**
 - **VIII.4 Pregnancy Disability Leave**
 - **VIII.5 Family and Medical Leave**
 - **VIII.3 Personal Leave without Pay**
- **SHRM Benefits Homepage (<https://benefits-int.llnl.gov/>)**
 - **LLNS Disability Benefits Checklist**
 - **LLNS Leave of Absence Benefits Checklist**

For More Information

Contact the Laboratory's
Benefits Office at 422-9955,
Building 543, Room 1220

